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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,959	12/14/2004	Eric Fresnel	6758-0005WOUS	3762

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EXAMINER
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AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/517,959

Applicant(s)

FRESNEL, ERIC

Examiner

Walter B. Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-12, in the reply filed on June 26, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

2. The abstract of the disclosure is objected to because phrases that can be implied such as "This invention relates to" should be avoided. Furthermore, the language of the abstract that is also in the original set of claims should be amended as necessary to comport with the amendments made to the claims in order to overcome the rejection of the claims under 35 U.S.C. 112 made of record in this Office Action below.

Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "semi-rigid" in claims 2, 10 and 11 is a relative term which renders the claim indefinite. The term "semi-rigid" is not defined by the claim, the specification does not provide a

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standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In further regard to claim 2, that which Applicant intends to recite by "in its formulation" cannot be ascertained.

In regard to claim 3, that which Applicant intends to recite by "in a technical agent in a registered position" cannot be ascertained.

In regard to claim 4, that which Applicant intends to recite by "coated in the technical agent" cannot be ascertained. Claim 4 recites the limitation "embossed zones that are associated with a high shrinkage ratio" in lines 3-4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 5, 6 and 12, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim 7 recites the limitation "the... thermoswelling technical varnish" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 8 and 9 recite the limitation "the thermosetting or thermoswelling technical varnish" in the second line of the claims. There is insufficient antecedent basis for this limitation in the claims.

The term "rigid" in claims 10 and 11 is a relative term which renders the claim indefinite. The term "rigid" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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In regard to claim 11, that which Applicant intends to recite by “presents a fine screen on its free face” cannot be ascertained.

In regard to claim 12, that which Applicant intends to recite by “presents screening or the like” cannot be ascertained.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Inagaki (USPN 4,690,843).

In regard to claim 1, Inagaki teaches a wrapper (casing) for ham or sausage comprising a sleeve of heat-shrink plastics material (base film, col. 2, lines 3-4) for shrinking onto the ham or sausage for packaging (col. 1, lines 56-59 and col. 1, line 66-col. 2, line 4) where the wall of the sleeve is embossed with a predetermined pattern so that the pattern appears in relief on the outside face or inside face of the sleeve (col. 1, lines 11-12, col. 1, line 66-col. 2, line 2, col. 3, lines 27-30 and 38-50 and col. 4, lines 26-41). The recitation “said sleeve being made from a film that is folded in half and whose corresponding end zones are united” in lines 3-5 of claim 1 has not been given patentable weight since this recitation does not describe the structure of the final product that is claimed (the wrapper). Regardless, Inagaki teaches that the end zones of the wrapper are united (Fig. 4). The recitation “and remains after said sleeve has been shrunk onto the article(s) to be packaged” in lines 8-10 of claim 1 is a redundancy in the claim since the

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recitation that “the wall of the sleeve is embossed... in relief” (lines 5-7) requires that the pattern exist in the final product.

In regard to claim 2, the sleeve of Inagaki is semi-rigid since it is heat-shrinkable (col. 2, lines 3-4). The recitation “including an elastomeric phase in its formulation” has not been given patentable weight since the phrase “in its formulation” indicates that the film includes an elastomeric phase during the formation of the film, and not necessarily that the wrapper comprises an elastomeric phase in its final form.

In regard to claims 3 and 4, Inagaki teaches that a technical agent (bonding agent) is coated on the inside or outer face of the sleeve at the location of the embossed pattern (col. 2, lines 55-61). The recitation “for encouraging... said sleeve” in claim 3 is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). The recitation of claim 4 “during shrinking of said sleeve” cannot be given patentable weight since this recitation does not describe the structure of the final product that is claimed (the wrapper).

In regard to claim 5, Inagaki teaches that the technical agent (bonding agent) is a thermosetting polymer (urethane, col. 2, lines 55-61). The recitation “that locally blocks... embossed pattern” is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

In regard to claim 6, Inagaki teaches that the technical agent (bonding agent) is a thermoswelling polymer (urethane, col. 2, lines 55-61 and 30-38). The recitation “that locally pushes... shrinkage of the sleeve” is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). Furthermore, the recitation “during shrinkage of the sleeve” cannot be given patentable weight since this recitation does not describe the structure of the final product that is claimed (the wrapper).

In regard to claim 7, the thermosetting polymer (urethane) is reactivatable at a temperature compatible with the temperature range for heat-shrinking the film (col. 2, lines 30-38 and 55-61).

Claims 8 and 9 cannot be treated due to the lack of antecedent basis in claims 8 and 9. See 35 U.S.C. 112 rejection of claims 8 and 9 made of record in this Office Action above.

In regard to claim 10, the technical agent (bonding agent) is in the outside face of the sleeve in the recesses of the embossed pattern since Inagaki teaches that the printing is pasted up to the base film by the bonding agent (col. 2, lines 55-61). Urethane can be characterized as rigid or semi-rigid.

In regard to claims 11 and 12, Inagaki teaches that the printing is a silk screen print (col. 2, lines 64-68).

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***Conclusion***


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
08/04/06

WBA

  
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8/4/06